

A. Bell Atlantic's National Directory Assistance Service Provides No Reason To Deny Its Application.

AT&T's lead argument is that Bell Atlantic's Application should be denied because it offers a national directory assistance ("NDA") service that should be provided through a section 272 affiliate, but currently is not. See AT&T at 65-67.

This issue arises only because the Commission recently for the first time held that an NDA service like Bell Atlantic's is an interLATA service and is not within the scope of the services grandfathered by section 271(f) (in which case the separate-affiliate requirement would not have applied).⁴⁶ The Commission also held that an NDA service *is* an incidental interLATA service authorized by section 271(g)(4), so long as the service is provided with the BOC's own database. See NDA Order ¶¶ 23-27, 63.⁴⁷ Although the service therefore falls within the scope of the separate-affiliate requirement, see id. ¶¶ 3, 12, 28, the Commission granted forbearance from that requirement to the extent U S West provided the service by using its own database, see id. ¶¶ 28-56, 64.

Bell Atlantic's service is indistinguishable from the U S West service with respect to which the Commission granted forbearance. See id. ¶¶ 28-56; Browning Rep. Decl. ¶ 4. In the wake of the NDA Order, Bell Atlantic filed a forbearance petition with respect to its own NDA service to comply with the newly established requirement. See Browning Rep. Decl. ¶ 4. Bell Atlantic will either obtain forbearance from section 272 requirements or otherwise come into compliance with the Commission's rules. See id.

⁴⁶See Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Memorandum Opinion and Order, CC Docket Nos. 97-172 & 92-105, FCC 99-133, ¶¶ 18-22 (rel. Sept. 27, 1999) ("NDA Order").

⁴⁷Bell Atlantic's service relies on data base facilities that are owned by Bell Atlantic – not by a third party. See Browning Rep. Decl. ¶ 4.

B. Bell Atlantic Will Comply with the “Operate Independently” Requirement of Section 272(b)(1).

AT&T next argues that Bell Atlantic’s long distance affiliates do not “operate independently” from their BOC affiliates. See AT&T at 67-68. This is so, AT&T contends, because one of Bell Atlantic’s 272 affiliates (BAGNI) has leased real estate from Bell Atlantic, and because Bell Atlantic has agreed to provide certain site-preparation services in connection with that real estate. AT&T argues that those services include “assistance in preparing the sites for the placement of BAGNI’s switches and transmission equipment,” and that this is tantamount to providing prohibited “operating, installation, and maintenance” services. Id. at 67.⁴⁸

That claim is both legally and factually flawed. Although BOCs are prohibited from providing “installation” services in connection with their 272 affiliates’ network equipment, see Second Louisiana Order ¶ 327; 47 C.F.R. § 53.203(a)(3), that term has a well-established meaning: it derives from “to install,” which means “to set up for use or service.” Webster’s Third New International Dictionary 1171 (1993). Space preparation or other construction services that do not involve the actual setting up for use or service of network equipment are not prohibited.

This Commission has already decided just that. It has made clear that nothing prohibits a BOC from providing its 272 affiliate with collocation arrangements.⁴⁹ Providing collocation arrangements necessarily includes extensive site-preparation services; in the typical arrangement,

⁴⁸AT&T quite notably does *not* claim that a 272 affiliate is not permitted to lease real estate owned by the BOC with which it is affiliated or that a BOC is barred from providing services of any kind in connection with such real estate. Nor could it. Neither section 272(b)(1) nor the Commission’s implementing rules contains any such restrictions.

⁴⁹See, e.g., Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21,905, ¶¶ 15, 158, 161 (1996) (“Non-Accounting Safeguards Order”).

a BOC makes available a cage that has been so extensively prepared for the placement of network equipment that nothing remains to be done except lowering the equipment into place and connecting it. The site-preparation services here involved fall far short of those involved in a collocation arrangement. See Browning Reply Decl. ¶¶ 5-7. Section 272(b)(1) therefore unquestionably permits them.

C. Bell Atlantic Will Comply with the Disclosure Requirements of Section 272(b)(5).

AT&T next argues that Bell Atlantic has violated the disclosure requirements of section 272(b)(5) by failing to provide sufficient detail in posted descriptions of transactions between Bell Atlantic and its 272 affiliates. See AT&T at 69-70. As more fully explained in the Browning Reply Declaration, however, Bell Atlantic posts information as soon as it becomes available, and each of the specific disclosures to which AT&T points is adequate and contains sufficient detail. See Browning Rep. Decl. ¶¶ 8-17. To the extent additional detail became available after the initial posting, Bell Atlantic disclosed it. See id. ¶¶ 9, 11, 13. To the extent AT&T complains that Bell Atlantic has not disclosed additional transactions, it is because there are not yet any other transactions to disclose. See id. ¶¶ 14-15.⁵⁰

D. Bell Atlantic Will Comply with the Non-Discrimination Requirements of Section 271(c)(1).

AT&T next complains that Bell Atlantic has in two ways failed to demonstrate compliance with the non-discrimination requirement of section 272(c)(1). See AT&T at 71-73. First, AT&T points again to BAGNI's real-estate leases and asserts that "Bell Atlantic has presented no evidence to show that these lease arrangements were entered into in a nondiscriminatory manner." Id. at 72. AT&T implies that, to satisfy the non-discrimination

⁵⁰In addition, AT&T's claim that Bell Atlantic's postings have not been timely is, with very minor exception, simply baseless. See Browning Rep. Decl. ¶ 16.

requirement, a BOC must publicly list the availability of its real estate with a brokerage service before leasing it to a 272 affiliate. See Kargoll Aff. ¶ 55.

AT&T's argument is without legal support. This Commission has required the kinds of pre-contracting publication procedures AT&T apparently desires only where there is an ownership transfer of a "unique" facility.⁵¹ Here, there is neither an ownership transfer nor a "unique" facility.⁵² Although not required by the Commission's rules, there is additional space available in the building at issue and in other, comparable, buildings. See Browning Rep. Decl. ¶ 18. With respect to the leases here at issue, AT&T never appears to have expressed any interest. See id. In any event, Bell Atlantic telephone companies routinely lease non-central-office space to unaffiliated carriers and other parties without first canvassing the entire free world for expressions of interest. There is simply no basis to claim discrimination when they do the same thing for a 272 affiliate.

Second, AT&T argues that "Bell Atlantic's intended sharing of its CPNI with its section 272 affiliates should also be found to violate section 272(c)(1)." AT&T at 72; see also Kargoll Aff. ¶¶ 83-86. But, as even AT&T is forced to admit (see AT&T at 72), this Commission has

⁵¹See Non-Accounting Safeguards Order ¶ 218; see also Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Third Order on Reconsideration, CC Docket No. 96-149, FCC 99-242, ¶ 29 (rel. Oct. 1, 1999).

⁵²Apparently in an effort to meet the "uniqueness" standard, AT&T's affiant asserts that the real estate involved includes "over 11,000 square feet of space in mid-town Manhattan (5030 Broadway, New York, NY)," implying that the choicest real estate is involved. Kargoll Aff. ¶ 56; see also AT&T at 72. Even on the doubtful assumption that any rental property could ever be "unique" for purposes of section 272(c)(1), 5030 Broadway is not unique. It is located not in mid-town Manhattan but "between 213th and 214th Street, far above the prime commercial areas of 'mid-town Manhattan' and just south of the Bronx." Browning Rep. Decl. ¶ 18 n.5.

rejected that argument in its CPNI rulemaking,⁵³ and has refused to re-evaluate the argument in the context of a BOC's long distance application. See Second Louisiana Order ¶ 344.

CloseCall raises a claim that AT&T does not raise; it expresses vague concerns about "groups within Bell Atlantic that have access to key information from and within the Bell Atlantic long distance affiliates." CloseCall at 7. It is not entirely clear what kinds of violations CloseCall fears. If its argument is that BOCs should not be entitled to provide administrative services to their 272 affiliates, CloseCall is simply wrong. See, e.g., Non-Accounting Safeguards Order ¶¶ 168, 179. If CloseCall's concern is with a discriminatory flow of information from BOCs to 272 affiliates, the concern is factually misplaced: Bell Atlantic has implemented measures to protect against such an information flow. See Browning Rep. Decl. ¶ 22.

E. AT&T's Arguments Concerning Joint Marketing Are Meritless.

AT&T finally claims that Bell Atlantic's Application must be denied because it fails to spell out in detail how Bell Atlantic will market its 272 affiliates' long distance service (as is permitted by section 272(g)). See AT&T at 73.

AT&T's argument is flatly barred by Commission precedent. In the South Carolina Order, the Commission ruled: "We do not require applicants to submit proposed marketing scripts as a precondition for section 271 approval Applicants are free to tell us how they

⁵³See Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Order on Reconsideration and Petitions for Forbearance, CC Docket Nos. 96-115 & 96-149, FCC 99-223, ¶ 137 (rel. Sept. 3, 1999); Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, ¶ 169 (1998).

intend to joint market, although *we do not require them to do so.*" South Carolina Order ¶ 236 (emphasis added).

AT&T also argues that this Commission erred in deciding (see id. ¶¶ 237-239) that BOCs may promote their 272 affiliates' services during inbound calls. See AT&T at 73-77. The Commission has already rejected AT&T's precise arguments. See South Carolina Order ¶¶ 237-239. Regardless, even if AT&T's arguments were persuasive, it would make no difference: as explained in the preceding paragraph, this Commission need not pass on marketing scripts in the context of section 271 applications.⁵⁴

III. APPROVING BELL ATLANTIC'S APPLICATION IS IN THE PUBLIC INTEREST.

In its Application, Bell Atlantic showed that local competition in New York is thriving; that local markets in New York will remain open after Bell Atlantic obtains section 271 approval; and that permitting Bell Atlantic to provide interLATA service in New York will vastly enhance consumer welfare. See Application at 55-82. CLECs disagree with some or all of these points, but their arguments are unpersuasive.

A. Local Competition in New York Is Thriving.

Bell Atlantic's Application proved beyond dispute that local markets in New York are open, and that competition is flourishing. The Department of Justice agrees: "[t]he state of New York provides unique competitive opportunities for carriers seeking to provide local telecommunications services." DoJ Eval. at 8; see also MCI WorldCom at 45-46. The amount of lines served by competitors in New York is, the Department acknowledges, "significantly

⁵⁴Excel argues that the Commission should bar Bell Atlantic's 272 affiliates from reselling local service. See Excel at 6-13. The Commission has already held that section 272 permits 272 affiliates to resell local service. See Non-Accounting Safeguards Order ¶ 313. Excel provides no reason to decide otherwise here.

larger than the national average.” DoJ Eval. at 9.⁵⁵ Competition continues to grow: as of September, competitors are now serving a very conservatively estimated 1.3 million lines, more than 720,000 of which are facilities-based. See Taylor Rep. Decl. ¶ 30; Rep. Cmts. Att. A.⁵⁶

Unbundled element competition in New York has similarly skyrocketed. See Taylor Rep. Decl. ¶ 30 (almost 500% annual growth). Relying on UNE platforms, competitors in New York more than anywhere else have begun to mass-market local service to residential customers. In the first nine months of 1999, competitors on average added more than 20,000 residential lines per month. See Rep. Cmts. Att. B. At a time when the overall market is growing, Bell Atlantic on net is losing residential lines. See id. In September alone, competitors added 53,000 platform lines. See Lacouture/Troy Rep. Decl. ¶ 34. And the total number of platform lines now stands at *nearly a quarter of a million predominantly residential lines*. See id.; Taylor Rep. Decl. ¶ 30.⁵⁷

⁵⁵AT&T argues that, despite the massive numbers of lines now served by CLECs, their market shares are still small. See AT&T at 79. But that could not possibly matter for purposes of the public interest inquiry. Neither the Act, this Commission, nor the Department of Justice requires the loss of a set market share. See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20,543, ¶ 391 (1997) (“Michigan Order”); DoJ Eval. at 8 n.12.

⁵⁶Not a single commenter denies that competitors are serving customers predominantly over their own facilities or that Bell Atlantic’s Application satisfies “Track A.” Even some of Bell Atlantic’s opponents expressly acknowledge that Track A is satisfied. See, e.g., MCI WorldCom at 8 n.11. AT&T, however, quibbles with Bell Atlantic’s estimate of facilities-based lines, arguing that lines served by CLECs over their own switches but over Bell Atlantic’s loops should not be included in the facilities-based count. See Kelley Decl. ¶ 18. But ignoring these lines would reduce the count by only about 7 percent. See Taylor Rep. Decl. ¶¶ 30, 36. And these lines should not be ignored: they unquestionably involve significant competitive facilities. See id. ¶ 35.

⁵⁷Moreover, residential customers have benefited from price and service competition, as competitors offer lower prices and varied service packages. See Rep. Cmts. Att. C. And, while Bell Atlantic’s ability to respond is limited by regulatory constraints, it nonetheless has reacted when it can through a variety of promotions and other money saving measures for consumers. See id.

This massive entry into the local residential market has everything to do with Bell Atlantic's pending Application. The vast majority of the UNE platform lines are being leased by the major long distance incumbents, which are obviously eager to protect their long distance returns by positioning themselves to provide one-stop shopping. See Application at 60-61. MCI WorldCom has been adding residential platform lines for the last several months, and has turned up the heat with TV advertisements and other mass marketing. See Taylor Rep. Decl. ¶ 40. AT&T began offering residential service using the platform in August of this year. See AT&T at 20. Last week, Sprint joined the fray. See Winnie Hu, Sprint to Take On Bell Atlantic With \$35-a-Month Local Calling, N.Y. Times, Nov. 4, 1999, at B-14; Taylor Rep. Decl. ¶ 41. Sprint's entry is particularly significant: until last week, the company had not acted as a CLEC anywhere in the country – not even with respect to business customers.⁵⁸

A few commenters attempt to downplay the massive amount of competition present in New York by claiming that most of it is confined to the New York metropolitan area and other large cities. See KMC at 10; CPI at 3; MCI WorldCom at 44; AT&T at 79-80. But these claims are factually mistaken. More than 37 percent of all competitive lines and more than 30 percent of facilities-based competitive lines are outside of New York City. See Taylor Rep. Decl. ¶ 31. Competing carriers have deployed at least 15 switches and nearly 1,000 route-miles of fiber in upstate New York. See id. And competitors have collocation arrangements in central offices serving 85 percent of Bell Atlantic's access lines in the entire State. See id.

⁵⁸ AT&T argues that long distance incumbents would enter local markets regardless of Bell company entry into long distance. See, e.g., Aquilina Aff. ¶ 19; Bernheim Aff. ¶ 159. But that is simply not credible. They have begun mass-marketing local service only in New York, the only State where Bell entry is imminent. See Taylor Rep. Decl. ¶ 42. Clearly, they will do so only if faced with the prospect of a competitor that, like Bell Atlantic, will be able to mass-market a competitive bundle of both local and long distance service. See id.

Although the raw numbers upstate are smaller than those in Manhattan, that is a hardly an apt comparison. Due to unique economic and demographic circumstances, Manhattan is the most competitive telecommunications market in the country, and perhaps in the world. See Taylor Decl. Att. A ¶ 8. Nonetheless, the distribution of competing carriers' lines around the State is not very different from the distribution of Bell Atlantic's own lines.⁵⁹ In any event, the state of competition in Manhattan proves that upstate markets are open. Bell Atlantic has taken the same market-opening steps in both Manhattan and upstate New York. Bell Atlantic's OSS are uniform throughout the State, and its interconnection, UNE, and resale tariffs all apply state-wide.

B. Local Markets in New York Will Remain Open After Bell Atlantic Obtains Section 271 Approval.

Bell Atlantic's Application also showed that there is every assurance that local markets in New York will remain open after Bell Atlantic obtains section 271 approval. Bell Atlantic showed that the New York PSC has actively promoted local competition; that Bell Atlantic's wholesale prices fully comport with this Commission's pricing methodologies; and that Bell Atlantic is subject to comprehensive performance monitoring. There is near-universal agreement on the first point – that the New York PSC has been, is, and will be a stalwart champion of local competition. See, e.g., DoJ Eval. at 1, 3-4; AT&T at 78-79, 85; MCI WorldCom at 5, 46. Some CLECs disagree, however, on the latter two points. But, again, their arguments are wide of the mark.

⁵⁹The Department states without support that “approximately 90 percent of CLEC access lines” are “in the New York metropolitan area” (a term it does not define). See DoJ Eval. at 9-10. In fact, even the data used by AT&T's affiant Kelley suggest that fewer than 68 percent of competitive lines are in the New York City MSA. See Kelley Aff., Att. 2 (Table). The corresponding number for Bell Atlantic itself is more than 58 percent. See id.

1. Bell Atlantic's Prices for Network Elements Are Fully Consistent with This Commission's Rules.

AT&T and certain other commenters argue that Bell Atlantic's wholesale rates for network elements are inconsistent with this Commission's pricing rules.⁶⁰ AT&T claims that Bell Atlantic's network element prices do not comply with TELRIC (a) because Bell Atlantic's loop rates reflect the assumption that only fiber (instead of copper) should be used in feeder plant, and (b) because Bell Atlantic's switching rates are based on the switch prices that vendors charge for switch upgrades – not the lower prices vendors charge for entirely new switches. See AT&T at 58-64. MCI WorldCom and a few other commenters argue that Bell Atlantic charges non-cost-based rates for pre-qualifying DSL loops (i.e., checking whether loops can be used for DSL purposes) and for conditioning them (i.e., removing bridged taps, load coils, and other obstacles). See, e.g., MCI WorldCom at 32-33; CoreComm at 5-6; Covad at 6.

Each of these commenters appears to believe that, in evaluating a section 271 application, this Commission will re-examine prices *de novo*. They are mistaken. Under section 252(c)(2), it is the "State commission" that "shall . . . establish . . . rates for interconnection, services, or network elements." Mindful that this provision must be given real content, the Commission has explained:

[I]n arbitrating specific interconnection disputes, state commissions may exercise their considerable discretion to establish actual carrier-to-carrier rates in light of carrier- and

⁶⁰AT&T also argues that Bell Atlantic should have devoted more space in its Application and affidavits to pricing issues and should have produced the entire record of the PSC's pricing docket. See AT&T at 54; Clarke/Petzinger Aff. ¶ 11. But pricing information does not have to be included in a brief or in affidavits, so long as it is included in the "application." Michigan Order ¶ 291. Bell Atlantic's Application plainly includes more than the required information: quite apart from the discussion in Bell Atlantic's brief, Appendix G includes two dozen PSC orders addressing all aspects of interconnection and network element pricing, and Appendix H includes all relevant tariffs. And there simply is no requirement that an applicant produce the entire state pricing docket – which, incidentally, would have added another 5,500 documents filling 60 boxes to Bell Atlantic's already bulky Application.

region-specific variables such as geography, population density, and so forth. That role is important and complex: few tasks, for example, require as much expertise as the determination of the forward-looking economic costs of an efficient network, an inquiry that, under the FCC's rules, belongs to the state commissions.

Opening Brief for the Federal Petitioners at 26-27, FCC v. Iowa Utils. Bd., No. 97-831 (U.S. filed Apr. 3, 1998).⁶¹ The Supreme Court has endorsed this view: it has held that, although this Commission may establish standards setting forth a pricing methodology, “[i]t is the States that will *apply* those standards and implement that methodology, determining the concrete result in particular circumstances.” AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721, 732 (1999) (emphasis added).

Nor will the Commission assume a more comprehensive price-setting role in reviewing section 271 applications. The Competitive Checklist requires the Commission to evaluate only whether prices are “in accordance with the requirements of [section] 252(d)(1)” (47 U.S.C. § 271(c)(2)(B)(i), (ii)) – that is, whether the state commission has used the proper methodologies to set individual carriers’ rates. In keeping with the statutory text, the Michigan Order states that the Commission evaluates “the methodology used to derive prices for checklist items.” Michigan Order ¶ 288; see also id. ¶ 290 (“for purposes of checklist compliance, prices for interconnection and unbundled network elements must be based on TELRIC principles”); id. (“what is important is that the prices reflect TELRIC principles”).

⁶¹See also Reply Brief for the Federal Petitioners and Brief for the Federal Cross-Respondents at 7, FCC v. Iowa Utils. Bd., No. 97-826 (U.S. filed June 17, 1998) (“the state commissions, in applying [the FCC’s] methodology, would retain the critical and complex task of determining the economic costs of an efficient telephone network”). Indeed, as the Commission recently concluded specifically with respect to some of the charges that CLECs here complain about, “[w]e defer to the states to ensure that the costs incumbents impose on competitors for line conditioning are in compliance with our pricing rules for nonrecurring costs.” See UNE Remand Order ¶ 194.

As the PSC indicates in its Evaluation, "Bell Atlantic-NY's pricing obligations with respect to resale, unbundled network elements, and interconnection have been the subject of extensive inquiry and action in New York." PSC Eval. at 152. Based upon the massive (see supra, p.51, n.60) record of that inquiry, the PSC now "advise[s] the FCC that prices conforming to the FCC's requirements are in effect for resale, interconnection, and unbundled network elements provided by Bell Atlantic-NY." PSC Eval. at 162; see also id. at 152 (PSC applied "the FCC's avoided cost and TELRIC rules"); id. at 155 (PSC "adopted the FCC's so-called 'scorched node' approach"). These prices "will be subject to update in the NYPSC's Second Network Elements Proceeding, to ensure their continued compliance with the FCC's requirements." Id. at 162. There is no warrant for additional review here.

The PSC's review included each of the specific claims raised here. As for AT&T's claim that Bell Atlantic's prices reflect an assumption of too much fiber in feeder plant, the PSC found that, although "the investment costs associated with fiber exceeded those of copper, . . . the difference was found to be more than offset by the lower provisioning and maintenance costs of fiber."⁶² The PSC based this conclusion on the unique circumstances prevailing in New York.⁶³ The PSC rejected as irrelevant engineering models used in other States, finding that they

⁶²Cases 95-C-0657, 94-C-0095 & 91-C-1174, Opinion No. 97-2, PSC, Opinion and Order Setting Rates for First Group of Network Elements, at 83, Apr. 1, 1997 (App. G, Tab 9).

⁶³See, e.g., Cases 95-C-0657, 94-C-0095 & 91-C-1174, Opinion No. 97-14, PSC, Opinion and Order Concerning Petitions for Rehearing of Opinion No. 97-2, at 24, Sept. 22, 1997 (App. G, Tab 12) ("Particularly in large metropolitan areas, . . . the far smaller space taken up by fiber per unit of capacity means that these costs will be substantially less when fiber is deployed."); see also Lacouture/Troy Rep. Decl. ¶¶ 182-188.

“fail[ed] to take account of special needs in New York City, where fiber’s additional reliability and flexibility may be even more important than they are elsewhere.”⁶⁴

AT&T’s switch-related claim was similarly the subject of exhaustive PSC review. The PSC agreed with AT&T that “a [TELRIC] analysis of the sort used in these proceedings contemplates the construction of a new system,” and expressly rejected Bell Atlantic’s argument that prices should reflect the higher cost of switch upgrades.⁶⁵ While AT&T criticizes Bell Atlantic’s cost study on the grounds that it included an erroneous calculation of switch prices, the PSC rejected that study and relied on a different study prepared by its staff.⁶⁶ As a result, the PSC found that the error “would not negate the reasonableness of the rates we set.”⁶⁷ In any event, the PSC will re-evaluate switching rates as part of a more comprehensive proceeding,⁶⁸ and has stated that, in the meantime, switch rates are “temporary, subject to future refund or reparation.”⁶⁹

The DSL-related pricing claims of MCI WorldCom and others are similarly meritless. The rates of which these commenters complain are embodied in an effective tariff on file with the PSC. See Tariff Filing Dated Aug. 30, 1999 (App. D, Tab 206); Tariff Filing Dated Sept. 8,

⁶⁴Cases 95-C-0657, 94-C-0095 & 91-C-1174, Opinion No. 97-14, PSC, Opinion and Order Concerning Petitions for Rehearing of Opinion No. 97-2, at 27, Sept. 22, 1997 (App. G, Tab 12).

⁶⁵Case 95-C-0657, PSC, Order Denying Motion to Reopen Phase 1 and Instituting New Proceeding, at 9, Sept. 30, 1998 (App. G, Tab 18).

⁶⁶The staff study on which the PSC relied did survey historical prices for switch upgrades (along with prices of new switches), but it did so only to discern price *trends*; moreover, the Staff and the PSC viewed that study “not as a mathematically precise calculation of switching costs but as a reasonable *forward-looking* estimate.” Id. at 10 (emphasis added).

⁶⁷Id.; see also Lacouture/Troy Rep. Decl. ¶¶ 189-191.

⁶⁸See Case 95-C-0657, PSC, Order Denying Motion to Reopen Phase 1 and Instituting New Proceeding, at 11-12, Sept. 30, 1998 (App. G, Tab 18).

⁶⁹Id. at 12; see also PSC Eval. at 157; Lacouture/Troy Rep. Decl. ¶¶ 192-193.

1999 (App. D, Tab 209); see also Case 98-C-1357, PSC, Notice Inviting Comments on Non-Recurring Charges for DSL Links, Sept. 9, 1999; PSC Eval. at 79-80. Bell Atlantic's filing was accompanied by extensive cost-support data that proved Bell Atlantic's rates to be entirely consistent with TELRIC principles. See Tariff Filing Dated Aug. 30, 1999 (App. D, Tab 206); Lacouture/Troy Rep. Decl. ¶¶ 195-196.⁷⁰ The PSC has established expedited procedures to review the tariffs involved,⁷¹ which are "targeted toward a Commission decision by the end of this year."⁷² If, as a result of the PSC's review, it turns out that Bell Atlantic's rates are not cost-based, CLECs will be entitled to refunds.⁷³

In sum, each of the pricing claims raised here is and has been the subject of extensive PSC review. There is no reason to duplicate the PSC's work. If the commenters now complaining of Bell Atlantic's prices desire further review, they should raise (or, rather, should have raised) their claims in actions in federal district court. See 47 U.S.C. § 252(e)(6). That none of these commenters did so shows that they know that their claims lack merit.⁷⁴

⁷⁰Commenters (see, e.g., MCI WorldCom at 32) imply otherwise simply by pointing to the absolute amounts of some of the conditioning charges involved. But conditioning charges are high because "[c]onditioning' loops to remove . . . impediments . . . can be expensive." Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, ¶ 10 n.10 (1999); see Tariff Filing Dated Aug. 30, 1999, Loop Conditioning Study at 7-9 (App. D, Tab 206).

⁷¹See Case 98-C-1357, PSC, Notice Inviting Comments on Non-Recurring Charges for DSL Links, Sept. 9, 1999; see also PSC Eval. at 155 n.2.

⁷²Case 98-C-1357, PSC, Procedural Ruling Concerning DSL Charges, at 1-2, Sept. 30, 1999.

⁷³See id.; see also PSC Eval. at 79-80.

⁷⁴The two pricing claims raised in AT&T's comments (relating to feeder fiber and switch discounts) were raised in the only district-court action brought in connection with Bell Atlantic's New York interconnection agreements, which has now been fully briefed and is awaiting decision. See Memorandum in Support of MCI's Motion for Summary Judgment, MCI Telecomms. Corp. v. New York Tel. Co., No. 97-CV-1600 (N.D.N.Y. filed June 1, 1998); see

2. Bell Atlantic's Reporting Mechanisms Are More Than Adequate.

Performance Measures. The New York PSC spent more than two years supervising a “collaborative process” in which CLECs, consumer groups, and state agencies (with input from the Department of Justice) worked with Bell Atlantic to formulate comprehensive reporting requirements and standards. The more than 500 different performance metrics developed to date in this Carrier-to-Carrier proceeding (see Dowell/Canny Rep. Decl. ¶ 6) “were extensively analyzed by all interested parties,” and many of the measurements “go well beyond the Checklist requirements.” PSC Eval. at 4, 12 n.1. The PSC concluded that these requirements and standards “are comprehensive and will help fulfill our goal of achieving expeditiously an open, competitive local exchange market.”⁷⁵ The Department of Justice has similarly concluded that these “comprehensive performance measures [have] helped enormously to identify possible performance problems in some areas and to provide convincing evidence of adequate performance in others.” DoJ Eval. at 6.

Among the numerous competing carriers that participated in the Carrier-to-Carrier proceedings, only AT&T and MCI WorldCom now claim that Bell Atlantic's reporting requirements and standards are inadequate. See AT&T at 45-49; Pfau/Kalb Decl. ¶¶ 16-92; Kinard Decl. ¶¶ 5-32. But it will always be possible to claim that there should be even more measures and even stricter standards. In formulating its performance measurements, however, the PSC carefully balanced the benefits of detecting additional discrimination against the costs of even more burdensome performance measurements. See Dowell/Canny Rep. Decl. ¶ 7. AT&T

also Application at 8 n.8; PSC Eval. at 157 n.2. The comments of MCI WorldCom (the only plaintiff in the district court action), however, do not repeat these claims here.

⁷⁵Case 97-C-0139, PSC, Order Establishing Permanent Rule, at 3, June 30, 1999 (App. E, Tab 83).

and MCI WorldCom provide no basis for this Commission to overturn the PSC's judgment and the consensus that was forged in two years of negotiations.⁷⁶

There is also no merit to AT&T's and MCI WorldCom's claims regarding Bell Atlantic's methods for collecting performance data. For example, they claim that Bell Atlantic's EnView system does not accurately report pre-ordering response times. In fact, CLECs agreed to and the PSC approved EnView's process for reporting response times in the Carrier-to-Carrier proceeding. See id. ¶ 12. Neither AT&T nor MCI WorldCom asked the PSC to reconsider this aspect of its decision. See id. AT&T even accepted the process for use in its own interconnection agreement. See id. Bell Atlantic's reporting on ordering measures has also proven reliable and thorough (particularly compared to AT&T's own submissions), as both the PSC and KPMG have confirmed. See id. ¶ 17.⁷⁷

Performance Assurance Plan. The New York PSC has now approved Bell Atlantic's Amended Performance Assurance Plan, essentially as submitted. The PSC determined that "[t]he PAP provides an effective mechanism to ensure the quality of BA-NY's performance." PAP Approval Order at 11; see id. at 32 (PAP provides "the basic assurance that the local telecommunications market remains open after the company obtains long distance approval"). The PAP's plans "offer a carefully crafted and comprehensive process to assess BA-NY's

⁷⁶And AT&T is simply incorrect in saying (at 47) that Bell Atlantic has failed to implement certain performance measures. Although some measures continue to be refined, Bell Atlantic is complying with its obligations. See Dowell/Canny Reply Decl. ¶ 8.

⁷⁷AT&T is also incorrect in claiming that the statistical methodology used to measure parity produces misleading results. See Duncan Rep. Decl. ¶ 19; Dowell/Canny Rep. Decl. ¶ 24. As the PSC explained, "[t]he objective of the PAP's statistical framework was to not hold BA-NY responsible for random variation given that the company is not rewarded for its good service." Cases 97-C-0271 & 99-C-0949, PSC, Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan, at 17, Nov. 3, 1999 ("PAP Approval Order").

wholesale service performance and provide CLECs with remedial relief in the event of substandard quality.” Id. at 11. The PAP thereby “exceeds the Section 271 checklist requirements.” Id. at 31.

Rehashing the arguments they made before the PSC, several commenters claim that the PAP does not put enough money at risk. The PSC rejected these concerns, concluding that “[t]he dollars at risk in the PAP are substantial and should deter BA-NY’s incentive to provide discriminatory service.” Id. at 18; see id. at 30. Moreover, the amount at risk in the PAP is significantly greater than the amount the Commission in the recent SBC/Ameritech Merger Order approved as sufficient to prevent back-sliding and promote the public interest – the very objectives at stake here. Bell Atlantic will be subject to annual penalties that are more than two-and-a-half times the penalties that SBC/Ameritech will face in any one State.⁷⁸ The Amended Plan is precisely the kind of “rigorous and extensive performance monitoring progra[m]” that the Commission “expect[s]” and “encourage[s]” state commissions to adopt. SBC/Ameritech Merger Order ¶ 380.

AT&T and others in effect argue that larger fines are necessarily always better, but this is simply not true. Excessive penalties encourage inefficient rent-seeking by competitors and inefficient investment in penalty-avoidance measures by the incumbent, to the ultimate detriment of the consumer. See Duncan Rep. Decl. ¶¶ 9-11. Thus, the challenging task in designing an effective enforcement plan is to set penalties that neither encourage inefficient rent-seeking and investment nor allow the incumbent to profit from misconduct. See id. ¶¶ 5, 13-16. The plans

⁷⁸See Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279, at App. C, Att. A-6 (rel. Oct. 8, 1999) (“SBC/Ameritech Merger Order”) (maximum annual penalty for Texas, which has 80 percent the number of access lines as New York, is \$82 million).

here at issue strike a balance between those concerns – if anything, the plans err on the high side.

See id. ¶ 15.⁷⁹

The PSC also properly rejected arguments that the amount at risk is insubstantial compared to Bell Atlantic's revenues and cash flow. See PAP Approval Order at 18. A rational actor would weigh the penalties it would have to pay against the *additional profits* it could earn through anticompetitive conduct. See Duncan Rep. Decl. ¶¶ 7, 16.⁸⁰ The \$269 million the plans place at risk should therefore be compared to the incremental profits that Bell Atlantic could have earned as a result of possible discrimination – not to Bell Atlantic's revenue.⁸¹

The PSC's recent decision also puts to rest complaints that Bell Atlantic can avoid liability under the Amended Plan as a result of subcaps. See PAP Approval Order at 14. Although such concerns were insubstantial to begin with, see Duncan Rep. Decl. Att. ¶ 34, the Amended Plan incorporates revisions to address them. In particular, the Amended Plan

⁷⁹There is also no cause to indulge suggestions (see, e.g., Allegiance at 14-17; ALTS at 79-86; CompTel at 29, 48-64) that the Commission adopt a federal anti-back-sliding plan. See Dowell/Canny Rep. Decl. ¶¶ 81-83; Duncan Rep. Decl. Att. ¶ 42. The plans already in effect are more than adequate. Moreover, this Commission has recognized that, to "maximize state flexibility," matters of performance monitoring should in the first instance be left to the States. Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, 13 FCC Rcd 12,817, ¶ 23 (1998); see also SBC/Ameritech Merger Order ¶ 380 (encouraging state commissions to adopt anti-back-sliding plans).

⁸⁰This is consistent with the rationale that Common Carrier Bureau Chief Strickling recently articulated. See Letter from Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC, to Priscilla Hill-Ardoin, Senior Vice President-FCC, SBC, at 2 (Sept. 28, 1999) ("[T]he Bureau believes that the potential liability under such a plan must be high enough that an incumbent could not rationally conclude that making payments under an enforcement plan is an acceptable price to pay for hindering or blocking competition."). It is true that Chief Strickling elsewhere compared SBC's potential penalties to its "in-state gross local revenues." Id. As explained in the Duncan Reply Declaration, however, revenue is not the proper yardstick. See Duncan Rep. Decl. ¶ 16.

⁸¹And, contrary to AT&T's claims, it is not appropriate to assume in such a calculation that, but for discrimination, Bell Atlantic would lose 100 percent of its customer base to competitors. See PAP Approval Order at 18; Duncan Rep. Decl. Att. ¶ 17.

empowers the PSC freely to allocate amounts among the 122 different metrics involved. See PAP Approval Order at 7, 14, 19-20, 31-32. The PSC can even assign the Amended Plan's entire amount to a single metric. See Dowell/Canny Rep. Decl. ¶ 73. Nor is there any reason to assume that further disaggregation of performance metrics would make it easier to detect discrimination. See PAP Approval Order at 14, 15. The Amended Plan aggregates only similar metrics, which, as explained in the Duncan Reply Declaration, makes it *easier* to compare Bell Atlantic's wholesale and retail performance and identify disparities. See Duncan Rep. Decl. ¶ 17; id. Att. ¶ 35.

In any event, quite apart from performance plans, Bell Atlantic has many strong incentives not to discriminate. For example, Bell Atlantic still must obtain interLATA authority in many other in-region States, and any record of back-sliding in New York will damage its prospects before other state regulators and the Commission. See Dowell/Canny Rep. Decl. ¶ 68. Moreover, the proliferation of facilities-based competition in New York has put Bell Atlantic at considerable risk of losing customers; Bell Atlantic would much rather retain the traffic of wholesale customers than lose traffic altogether, and therefore has a strong incentive to provide good wholesale service. See id.; Taylor Rep. Decl. ¶ 39. Bell Atlantic also faces many enforcement mechanisms and penalties other than those in the Amended Plan, including possible revocation of section 271 authority. See Application at 71; see also PSC Eval. at 4 n.1 (the PSC "has reserved all options under state law to remedy inadequate service").

C. Permitting Bell Atlantic To Provide InterLATA Service in New York Will Vastly Enhance Consumer Welfare.

In its Application, Bell Atlantic showed that long distance competition is currently inadequate, that Bell Atlantic's entry will increase long distance competition, and that Bell Atlantic's entry will in no way impair long distance competition. See Application at 72-82.

Only AT&T (the long distance incumbent having the most to lose from Bell Atlantic's entry) disputes these points, arguing that Bell Atlantic's entry will give it an incentive and ability to injure long distance competition, see AT&T at 82-84; that regulation will not prevent Bell Atlantic from acting on that incentive, see id. at 84-85; and that, because the long distance market is already competitive, Bell Atlantic's entry will bring no consumer-welfare gains, see id. at 94-100.⁸² AT&T is fundamentally mistaken.

AT&T devotes most of its efforts to arguing that Bell Atlantic's long distance entry would not improve long distance competition. But that showing utterly fails. As MCI WorldCom CEO Bernard Ebbers testified before the Senate Judiciary Committee only last week in defending the proposed MCI WorldCom/Sprint merger, "an influx of new competitors, including the Bell regional operating companies, would ensure that long distance prices are kept in check." Esrey, Ebbers Say Merger Won't Dim Long Distance Competition, TR Daily, Nov. 4, 1999. That check is sorely needed: AT&T's experts have done nothing to shake the conclusion that, in recent years, consumer prices for long distance service have soared while access fees and other costs have plummeted. See MacAvoy Rep. Decl. ¶¶ 4-14; Taylor Rep. Decl. ¶¶ 7-8.

AT&T argues, however, that there has been no price or margin increase – at least not if one uses "average revenue per minute" ("ARPM") as the measure of price and if one includes fixed and other costs in the measure of cost. See, e.g., Bernheim Aff. ¶ 109. But, even measured by ARPM (which, incidentally, is a flawed gauge, see Taylor Rep. Decl. ¶¶ 12-13; MacAvoy Rep. Decl. ¶¶ 15-17), prices have gone up – as AT&T itself proudly proclaimed just two weeks ago. See Rebecca Blumenstein, MCI's Revenue, Operating Profit Surges: Telecoms Giant Weathers Industry Price-Cutting, Sparking Sighs of Relief, Wall St. J., Oct. 29, 1999, at A-3

⁸²AT&T is joined by MCI WorldCom only on this last point. See MCI WorldCom at 47.

(“AT&T officials on Monday said *revenue per minute has actually increased*”) (emphasis added); see also MacAvoy Rep. Decl. ¶¶ 18-19 (“ARPM-cost margin” has increased); Taylor Rep. Decl. ¶ 11 (same). And AT&T does nothing (other than speculate, see Bernheim Aff. ¶ 134) to show that costs – even according to its own measure – have increased. See MacAvoy Rep. Decl. ¶ 35; Taylor Rep. Decl. ¶ 15.

Because AT&T cannot disprove that prices and price-cost margins have risen, it points to a long list of (what it believes to be) secondary indicators of the long distance industry’s competitiveness, including the number of firms in the market, AT&T’s falling market share, the existence of excess capacity, and the incidence of customer churn. See AT&T at 95; Bernheim Aff. ¶¶ 100-118. But, even if AT&T’s distorted view of those factors rang true, it would not constitute proof of a market’s competitiveness. See Taylor Rep. Decl. ¶ 20; MacAvoy Rep. Decl. ¶ 30. The lack of adequate competition is manifestly apparent from increasing prices and price-cost margins; superficial appearances do not prove otherwise.

Similarly, AT&T’s affiants (see, e.g., Bernheim Aff. ¶ 99) are wrong when they claim that the proliferation of discount plans is evidence of robust competition. See Taylor Rep. Decl. ¶ 17. For many consumers, these plans are uneconomical. See MacAvoy Rep. Decl. ¶¶ 9-10; Taylor Rep. Decl. ¶ 17. As AT&T itself recently admitted, steep monthly fees ensure that customers often pay a higher – not lower – per-minute rate. See Rebecca Blumenstein, MCI’s Revenue, Operating Profit Surges: Telecoms Giant Weathers Industry Price-Cutting, Sparking Sighs of Relief, Wall St. J., Oct. 29, 1999, at A-3 (“AT&T officials on Monday said revenue per minute has actually increased in part because of these monthly fees. Also, people are talking more because they think their long-distance costs are lower.”); see also MacAvoy Rep. Decl. ¶¶ 11-14.

Nor does AT&T in any way undermine the conclusion that low-volume consumers are bearing the brunt of the industry's uncompetitive pricing. See Taylor Rep. Decl. ¶ 4. But this Commission hardly needs convincing on this point. See generally Application at 73. Only a week ago, the Common Carrier Bureau took the extraordinary step of suspending an AT&T tariff filing that would have brought about yet another increase in that company's fixed monthly "universal service" fee⁸³ – precisely because of its impact on low-volume customers.⁸⁴ That this should happen to the tariff of a carrier that has been declared non-dominant underscores the seriousness of the situation.

AT&T finally questions Bell Atlantic's commitment to the residential market, asking why Bell Atlantic would target a low-margin part of the industry. See AT&T at 98. As the Department's economist has explained, the answer is of course simple: because Bell Atlantic already provides residential customers with local service. See Taylor Rep. Decl. ¶¶ 4, 9 & n.10, 23. AT&T claims that this is precisely why Bell Atlantic's Application should not be granted until local markets are fully opened. See AT&T at 97. But that argument is dependent upon its claim that local markets in New York are not open; as already explained, that premise is flawed.

AT&T's efforts are similarly unsuccessful where it attempts to show that Bell Atlantic's long distance entry will injure long distance competition. Bell Atlantic's opening brief explained

⁸³See Interexchange Carrier End-User Charges To Recover Universal Service Contributions; AT&T Tariff FCC Nos. 13 and 27 Transmittal No. 11460, Suspension Order, CC Docket No. 99-324, DA 99-2379 (rel. Nov. 1, 1999). The Commission later "unsuspended" AT&T's filing, but the filing continues to be under review. See Bureau Won't Suspend AT&T Tariff Reducing Line-Item Charge, TR Daily, Nov. 2, 1999.

⁸⁴See Peter Goodman, FCC Rejects AT&T Fee Increase, Wash. Post, Oct. 30, 1999, at E-1 ("[Common Carrier Bureau Chief Lawrence] Strickling said low-volume callers were much on the bureau's mind as it denied AT&T's application."); Kathy Chen, AT&T Is Blocked In Plan to Raise Monthly Fee 50%, Wall St. J., Nov. 1, 1999, at B-7 ("Mr. Strickling said the result of AT&T's collection method is that 'it really loads up on people who don't make lots of long-distance calls.'").

why AT&T's speculative Chicken Little predictions – of access-discrimination, cross-subsidization, and price squeezes – need not frighten anyone. See Application at 77-82.

AT&T's predictions continue to be unconvincing even in theory. See Taylor Rep. Decl.

¶¶ 43-57. And this Commission has already found that regulatory safeguards are adequate to protect against the anticompetitive conduct that AT&T fears.⁸⁵

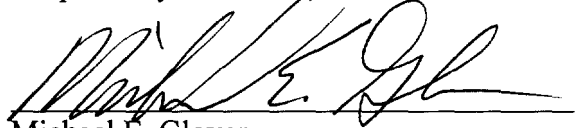
In any event, competition has flourished wherever BOCs have been allowed to enter adjacent markets, see Taylor Rep. Decl. ¶¶ 6, 48, 51; Application at 77-79 – as AT&T in effect concedes, see Bernheim Aff. ¶ 85. And AT&T's concerns with anticompetitive conduct have only become weaker with time: now that local markets are open, any anticompetitive conduct by Bell Atlantic would inevitably divert access traffic to networks of competing carriers or to carriers using UNE platforms. See Taylor Rep. Decl. ¶¶ 5, 6, 29, 52.

⁸⁵See, e.g., Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15,756, ¶ 119 (1997) (access discrimination); SBC/Ameritech Merger Order ¶¶ 231-235 (cross-subsidization and price squeezes); Application at 80 & n.76, 81 n.77.

CONCLUSION

For the reasons set forth above, Bell Atlantic's application for authorization to provide in-region interLATA service in New York should be approved.

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GLOSSARY OF TERMS

ADSL	Asymmetric Digital Subscriber Line
ALEC	National ALEC Association
Allegiance	Allegiance Telecom, Inc.
ALTS	Association for Local Telecommunications Services
ARPM	Average Revenue Per Minute
BAGNI	Bell Atlantic Global Networks, Inc.
BOC	Bell Operating Company
C&W	Cable & Wireless USA, Inc.
CCB	Common Carrier Bureau
Choice One	Choice One Communications, Inc.
CLEC	Competitive Local Exchange Carrier
CloseCall	CloseCall America, Inc.
<u>Collocation Order</u>	<u>Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999)
CompTel	Competitive Telecommunications Association
CORBA	Common Object Request Broker Architecture
CoreComm	CoreComm Limited/CoreComm New York, Inc.
Covad	Covad Communications Company
CPNI	Customer Proprietary Network Information
CPI	Competition Policy Institute
CSA	Customer Specific Arrangements
CSR	Customer Service Request

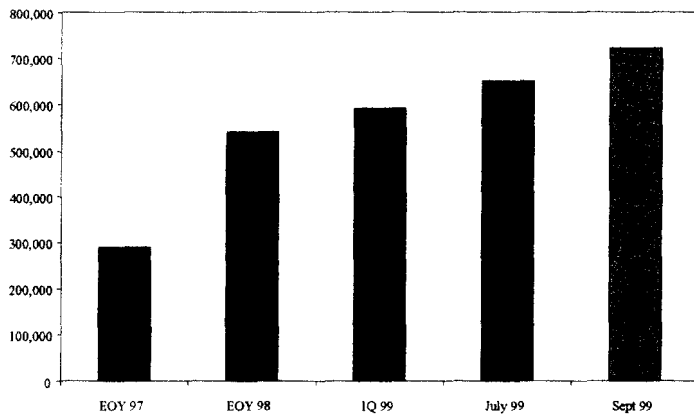
CTC	CTC Communications Corporation
DD-2	Due Date Minus Two
DoJ or Department	United States Department of Justice
DSL	Digital Subscriber Line
EDI	Electronic Data Interchange
EEL	Enhanced Extended Link
e.spire	e.spire Communications, Inc.
Excel	Excel Communications, Inc.
FCC	Federal Communications Commission
Global NAPs	Global NAPs Inc.
GUI	Graphical User Interface
IDLC	Integrated Digital Loop Carrier
ILEC	Incumbent Local Exchange Carrier
Intermedia	Intermedia Communications, Inc.
KMC	KMC Telecom, Inc.
KPMG	KPMG Peat Marwick LLP
KPMG Report	<u>KPMG, Bell Atlantic OSS Evaluation Project, Final Report, Aug. 6, 1999 (App. C, Tab 916)</u>
LATA	Local Access and Transport Area
LEC	Local Exchange Carrier
LSOG	Local Service Ordering Guidelines
LSRC	Local Service Request Confirmation

<u>Michigan Order</u>	<u>Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20,543 (1997)</u>
NAS	Network Access Solutions
NCTA	National Cable Television Association
NDA	National Directory Assistance
<u>NDA Order</u>	<u>Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Memorandum Opinion and Order, CC Docket Nos. 97-172 & 92-105, FCC 99-133 (rel. Sept. 27, 1999)</u>
NDR	Network Design Request
Net2000	Net2000 Communications Services, Inc.
<u>Non-Accounting Safeguards Order</u>	<u>Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21,905 (1996)</u>
NorthPoint	NorthPoint Communications, inc.
NYDPS	New York State Department of Public Service
NYPSC or PSC	New York Public Service Commission
OSS	Operations Support System
PAP	Performance Assurance Plan
<u>PAP Approval Order</u>	<u>Cases 97-C-0271 & 99-C-0949, PSC, Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan, Nov. 3, 1999</u>
RCN	RCN Telecom Services, Inc.
RETAS	Repair Trouble Administration System

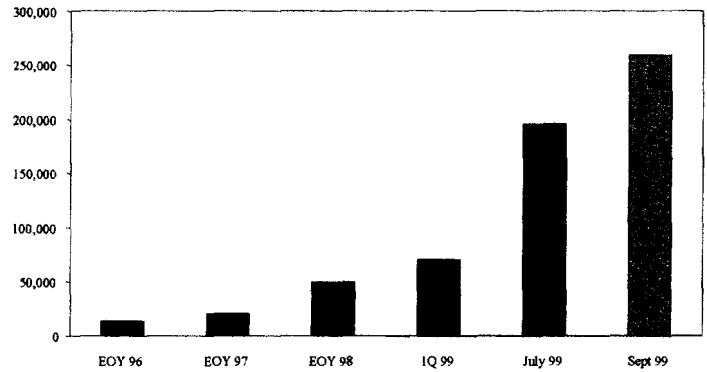
<u>SBC/Ameritech Merger Order</u>	<u>Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279 (rel. Oct. 8, 1999)</u>
<u>Second Louisiana Order</u>	<u>Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 20,599 (1998)</u>
<u>South Carolina Order</u>	<u>Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina, 13 FCC Rcd 539 (1997)</u>
Sprint	Sprint Communications Company L.P.
TELRIC	Total Element Long Run Incremental Cost
TRA	Telecommunications Resellers Association
UNE	Unbundled Network Element
<u>UNE Remand Order</u>	<u>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999)</u>
Z-Tel	Z-Tel Communications, Inc.
1996 Act	Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56

Attachment A. Local Competition in New York

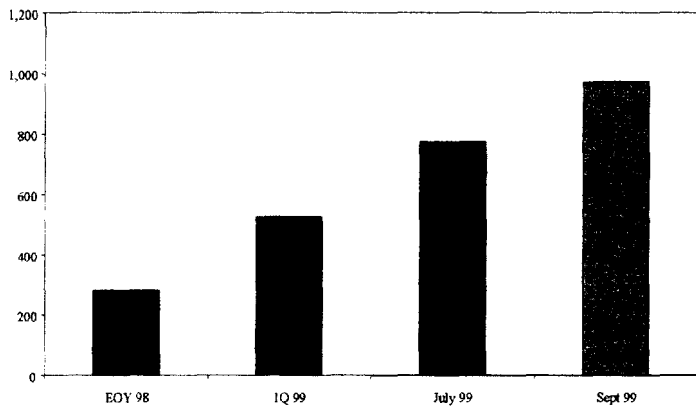
CLEC Facilities-Based Lines



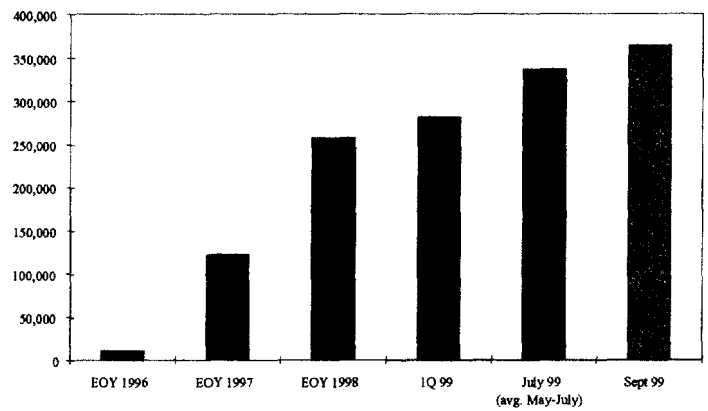
**CLEC Loops
(Unbundled and Platform)**



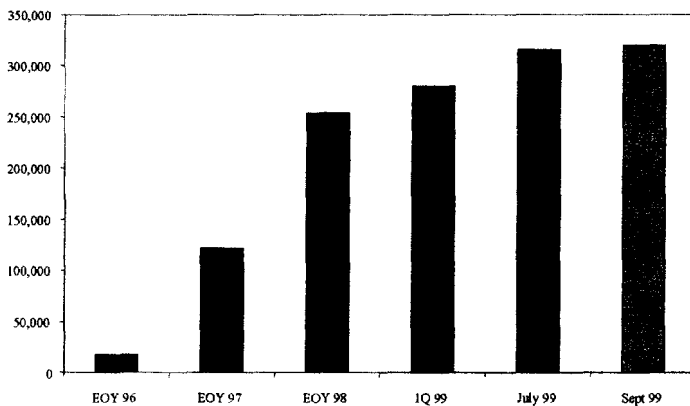
CLEC Collocation Sites



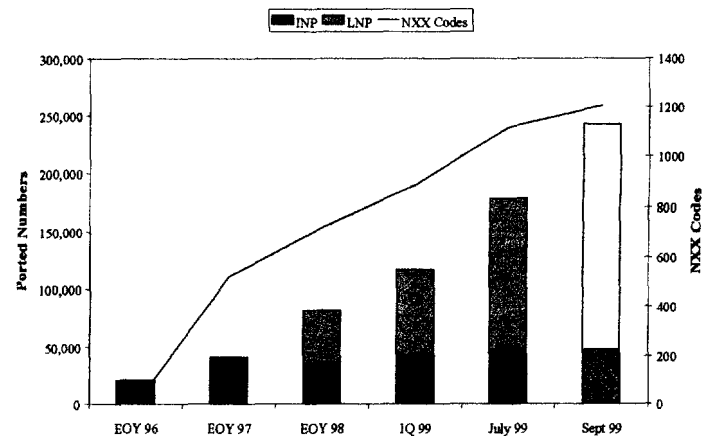
CLEC Interconnection Trunks



CLEC Resold Lines

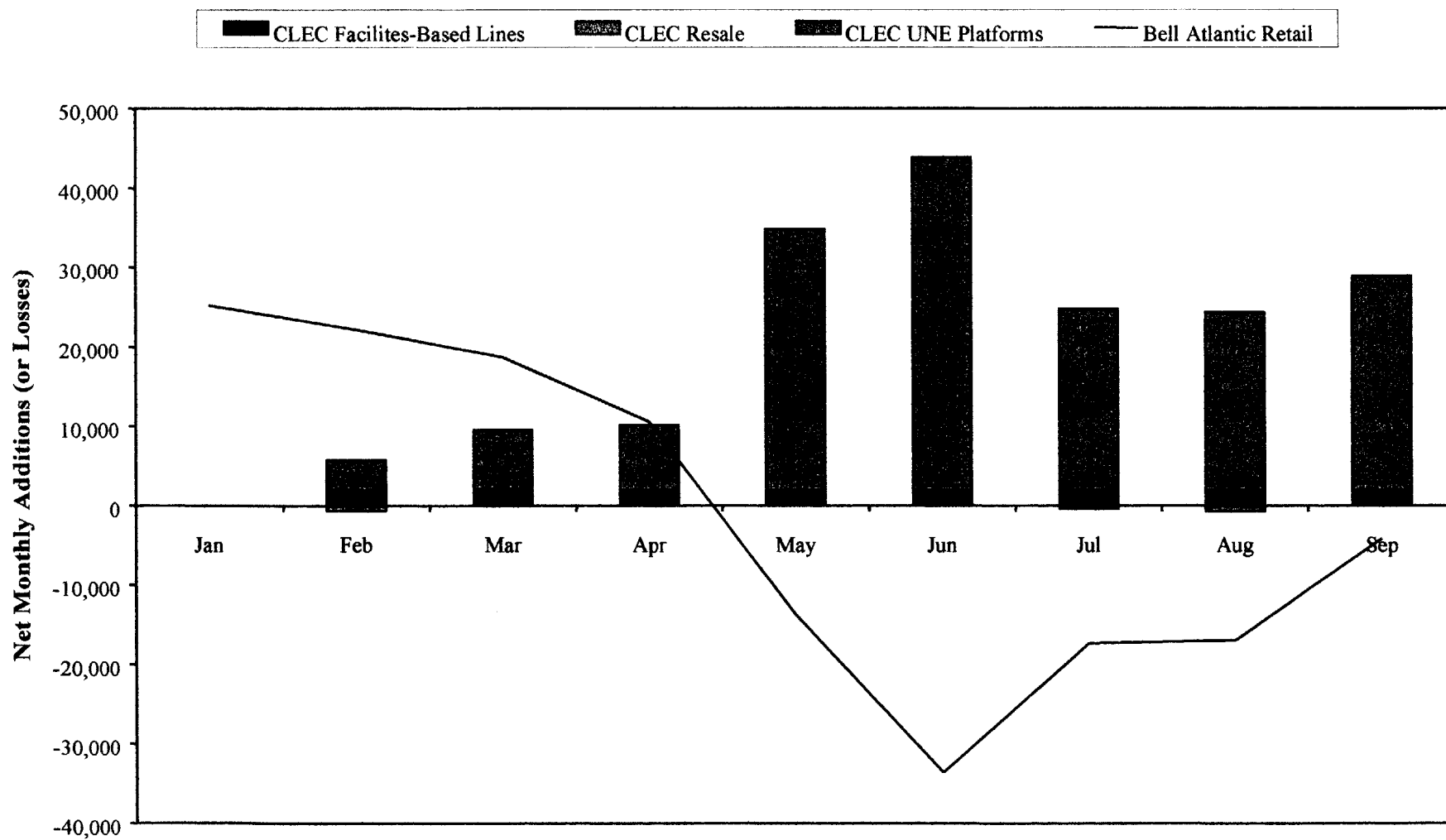


CLEC Ported Numbers and NXX Codes



B

Attachment B. CLECs Are Adding Residence Lines Faster Than Bell Atlantic Retail



ATTACHMENT C: PRICING COMPETITION FOR RESIDENCE CUSTOMERS

**CLECs are pricing
Below BA retail rates**

MCI WorldCom's lowest
priced basic service for \$6.27
is 5% less than BA

MCI WorldCom's 100 call
plan (\$19.99 upstate, \$14.99
downstate) is 25% less than BA

MetTel's basic service is 10% less
than BA (optional features 10% to
24% less than BA)

Cablevision's \$12.10/month package
is 30% less than comparable BA
services

Community Telephone's package is
21% less than BA (and 2½% of long
distance charges donated to charity)

RCN offers unlimited local calls for
\$19.95

AT&T offers 75 hours of local
calling for \$24.90

**BA responding with
promotional discounts**

\$20 off installation of second lines
(total customer savings: \$3.2M)

"Call Pack" 100-call discount
introduced 7/99 (total customer
savings: \$0.5M)

"Value Pack" discount on BA optional
features (total customer savings:
\$17.225M)

Caller ID discounts (total customer
savings: \$14M)

"Home voice mail" promotion (total
customer savings: \$1M)

New local package to be launched
1Q2000 (total customer savings:
\$21.6M)

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